

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>BEATRICE WILLIS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 3:05-CV-1019-W</b>
	)	
<b>SEARS, ROEBUCK &amp; CO.,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW the defendant, designated as Sears, Roebuck & Co. ("Sears"), and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court to grant summary judgment in its favor and dismiss all claims raised by plaintiff in her Complaint and Amended Complaint. In support of this motion, Sears shows the following:

1. There is no genuine issue as to any material fact, and Sears is entitled to judgment as a matter of law as to the plaintiff's sole claim of race discrimination brought under Title VII of the Civil Rights Act of 1964.

2. Plaintiff cannot establish a *prima facie* case of race discrimination under Title VII based on her termination from Sears. Specifically, the plaintiff cannot establish that similarly-situated white employees engaged in the same or similar misconduct and were retained.

3. Even assuming, *arguendo*, that plaintiff could establish a *prima facie* case of race discrimination, Sears had articulated a legitimate, nondiscriminatory reason for

the challenged decision--namely that the plaintiff misused Sears' service coupon to give customers unauthorized discounts.

4. Plaintiff cannot establish that Sears' articulated legitimate, non-discriminatory reason is a pretext for intentional race discrimination.

5. Even if the plaintiff could establish a claim for race discrimination, the plaintiff's relief is limited by the mixed-motive defense.

6. This motion is based on the pleadings; all discovery; defendant's evidentiary submission which includes the deposition of the plaintiff, Beatrice Willis, and all exhibits attached thereto; the deposition of Shannon Bryant; the declarations of Terry Gandy, Kenny Reese, Byron Mason, John Lawrie, Stephanie Darby, Carolyn Landers, and Jackie Dodson and all exhibits attached thereto, if any; the relevant portions of the deposition of Denise Smith; and defendant's memorandum brief in support of summary judgment filed contemporaneously herewith, and all exhibits attached thereto.

**WHEREFORE, PREMISES CONSIDERED,** Sears respectfully moves the Court to grant summary judgment in its favor on all the plaintiff's sole claim of race discrimination, dismiss plaintiff's Complaint and Amended Complaint with prejudice, and tax costs against plaintiff.

/s/Mieke A. Hemstreet

Mac B. Greaves (GRE007)

Mieke A. Hemstreet (HEM007)

Attorney for Defendant

SEARS, ROEBUCK & CO.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Defendant's Motion for Summary Judgment has been served on the following by directing same to his office address through first-class, United States mail, postage prepaid, on this the 16th day of October, 2006:

T. Robin McIntyre  
2101 Executive Park Drive  
Opelika, Al 36801

/s/ Mieke A. Hemstreet

OF COUNSEL